

STATE OF NEW MEXICO  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In re:

SOCORRO CONSOLIDATED  
SCHOOL DISTRICT,

Petitioner,

v.

PELRB No. 305-13

SOCORRO SCHOOL EMPLOYEES'  
ASSOCIATION (SSEA), LOCAL 3878,

Respondents

ORDER

THIS MATTER comes before the Board for review of the Executive Director's Summary Dismissal of the District's petition seeking a secret ballot election to determine majority status of the exclusive bargaining representative. On a vote of 3-0 during the scheduled Board Meeting June 11, 2013;

**IT IS HEREBY ORDERED:**

That the Executive Director's Summary Dismissal shall be, and hereby is, adopted by the Board as its own decision and Order for the reasons stated therein.


**IT IS FURTHER ORDERED:** that the Board's Order in *NEA v. Española Valley Schools*, PELRB 114-10 shall be amended as follows:

"By this Order the Board establishes a preference for ~~either a decertification election initiated by a bargaining unit member or a unit clarification proceeding initiated by the employer supervised by this Board~~ in preference to employer sponsored polling as the means for determining majority support."

The effect of the amendment is to preserve the Board's stated preference for a decertification election initiated by a bargaining unit member expressed in PELRB

114-10 while eliminating a unit clarification proceeding initiated by the employer as a preferred method for determining majority support.

Date: 6-19-13

  
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Duff Westbrook, Chair  
Public Employee Labor Relations Board

**STATE OF NEW MEXICO  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

**In re:**

**SOCORRO CONSOLIDATED  
SCHOOL DISTRICT,**

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**v.**

**PELRB No. 305-13**

**SOCORRO SCHOOL EMPLOYEES'  
ASSOCIATION (SSEA), LOCAL 3878,**

**Respondents**

**REPORT AND SUMMARY DISMISSAL**

THIS MATTER comes before the Board on a Petition seeking clarification of an existing bargaining unit based on an allegation that the union lacks majority support.<sup>1</sup> For the reasons stated below I am summarily dismissing the Petition. The sole basis on which majority status is challenged is a decline in the number of payroll deductions authorized for union dues. In *NEA - New Mexico v. Española Public Schools*, 34-PELRB-2012<sup>2</sup> this Board, by adopting the Hearing Officer's Findings, Conclusions and Rationale, established that a decline in the number of bargaining unit employees authorizing dues deductions is not sufficient to establish

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<sup>1</sup> In *NEA - New Mexico v. Española Public Schools*, 34-PELRB-2012, this Board stated that a challenge to a union's majority status may proceed by either a petition for decertification filed by a union member or by a unit clarification proceeding pursuant to NMAC 11.21.2.37 as is brought here. A unit clarification proceeding requires the employer to plead and prove that circumstances surrounding an existing collective bargaining unit have changed sufficiently to warrant a change in the scope and description of that unit. Upon the filing of a petition for unit clarification, the director shall investigate the relevant facts, and shall either set the matter for hearing or shall issue a report recommending resolution of the issues within thirty days of the filing of the petition.

<sup>2</sup> The representative for the School District in the *Española Public Schools* case and this are one and the same.

an actual loss of majority support. At the same time this Board established that a decline in the number of bargaining unit employees authorizing dues deductions was a sufficient basis for the employer to undertake additional research to establish a good faith doubt whether a union had the support of a majority of employees in the bargaining unit. (See Appendix A; the Board's Order in *NEA – New Mexico v. Española Public Schools*, 34-PELRB-2012).

In *NEA – New Mexico v. Española Public Schools*, the Board followed the standard enunciated in *Levitz Furniture Co. of the Pacific*, 333 N.L.R.B. No. 105 (2000-01) with regard to necessity for objective evidence of a union's **actual loss** of majority of its covered employees support. The NLRB, in the context of an employer's withdrawal of recognition, made clear in *Levitz* that to establish "actual loss" of majority support an employer may rely only on "objective evidence," offering as an example a petition signed by a majority of the employees in the bargaining unit. This Board, following *Levitz*, adopted the rationale that a decrease in dues deductions is not acceptable as the sort of objective evidence needed to prove an actual loss of majority support because it becomes speculative how many workers are supportive of the union in principle but simply do not want to pay for the benefits derived from that support. Furthermore, the mere assertion of a decrease in dues deductions authorizations is not probative because there is no indication concerning whether and to what extent the decrease in dues deduction may have been attributable to terminations, layoffs, retirements or resignations in positions soon to be filled with dues paying members or whether or how the employer controlled its sampling to account for those contingencies. Reliance on a reduction in dues deductions does not account for



whether bargaining unit employees are paying their dues by means other than payroll dues deductions. For these reasons the NLRB has long held that a failure to pay union dues does not reflect a lack of support for union representation, because employees often are content to support the union and enjoy the benefits of union representation without joining the union or giving it financial support. See, *Trans-Lux Midwest Corp.*, 335 NLRB 230, 232 (2001); *R.J.B. Knits*, 309 NLRB 201, n.2, 205 (1992); *Odd Fellows Rebekah Home*, 233 NLRB 143, 143 (1977). See also, *Calatrello v. Carriage Inn of Cadiz*, 2006 WL 3230778, (S.D. Ohio). (A lower number of dues-check authorizations does not establish a reasonable basis for believing that a union has lost majority support.)

*NEA – New Mexico v. Española Public Schools* requires summary dismissal because our rules require a party seeking any change in an existing unit to shoulder the burden of proof and the burden of going forward with the evidence. See, NMAC 11.21.1.22 (A). Because this Board also established that a decrease in dues deductions is not acceptable evidence of an actual loss of majority support, no good faith basis can be asserted for challenging majority support based solely on an allegation of such a decrease.

I acknowledge that an employer may file a petition for an election under certain circumstances to determine whether there is continuing support for an incumbent union<sup>3</sup> and this Board so held in its *Española Public Schools* Order.<sup>4</sup>

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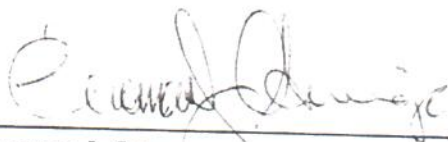
<sup>3</sup> Such an election is known in National Labor Relations Board parlance as an “RM election”.

However, a predicate to filing a petition for a RM election is a good faith basis for doubting the union's majority status. Because this petition is based solely on a decline in authorized dues deductions, which the Board has established is not competent evidence of a lack of majority support there is no good faith basis to support it. By its petition the employer seeks to skip over its obligation to undertake additional research to establish a good faith doubt whether the Union had the support of a majority of employees in the bargaining unit justified by the decline in dues deductions and proceed directly to an election as though no such duty exists. The Board should not establish a precedent of pursuing challenges to a union's majority status filed without a good-faith basis, nor should it undertake through its investigatory powers the employer's burden of establishing a sufficient good faith basis for bringing such a petition.

For these reasons the Petition is **DISMISSED**.

The employer may request Board review of this recommended disposition within 10 days after the issuance of a director's decision pursuant to NMAC 11.21.2.22.

Issued this 9<sup>th</sup> day of May, 2013



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Thomas J. Griego  
Executive Director, Public Employee Labor Relations Board

34-PELRB-2012

STATE OF NEW MEXICO  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In re:

NEA - NEW MEXICO  
Complainant,

02-17-2012 FILE 21

v.

PELRB No. 114-10

ESPAÑOLA PUBLIC SCHOOLS,  
Respondent

**ORDER**

THIS MATTER comes before the Public Employee Labor Relations Board for ratification of the Hearing Officer's Recommended Decision on the merits of the complaint herein. Upon a 3-0 vote at the Board's April 26, 2012 meeting;

**IT IS HEREBY ORDERED** that the Hearing Officer's Findings of Fact, Conclusions of Law, Rationale and ultimate recommended decision shall be and hereby is adopted by the Board as its own. To allow public employers to suspend negotiations without numerical proof of a union's actual loss of majority support even if its belief that the union had lost that support is in good faith undermines central policies of PEBA. It is destructive of the bargaining relationship. It deprives the employees of their chosen representative and disrupts the bargaining relationship until the union reestablishes its majority status to the employer's satisfaction. The employer in this case committed a Prohibited Labor Practice by suspending negotiations on March 30, 2009.

The employer had a basis on which to gather further evidence to establish its good faith belief that the union had lost majority support and therefore did not commit a PPC by undertaking a poll of bargaining unit members under the facts of



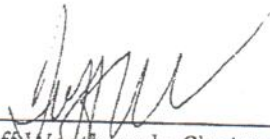
this case. Because the poll ultimately never took place, this Board does not decide the question whether the poll was free from taint or otherwise comported with principles established in *Grenada Stamping*, 351 NLRB No. 074 (2007). By this Order the Board establishes a preference for either a decertification election initiated by a bargaining unit member or a unit clarification proceeding initiated by the employer supervised by this Board in preference to employer sponsored polling as the means for determining majority support. This not to say that such polling would constitute a prohibited labor practice in every instance but that the employer undertaking to conduct one does so at great risk of being found to have violated § 10-7E-19(B) by interfering with an employee's right under PEBA or §10-7E-19(C) by interfering with the Union's rights. It is in the context of one of these two proceedings that the Respondent would be able to require the union to affirmatively produce contrary evidence to the employer's claim of loss of majority support, such as the as a signed petition, union records of dues paid through means other than payroll deductions, a poll, or an election that it asserts it was entitled to in this case. A Board-conducted secret ballot election has the advantages of ensuring that employees are informed of their rights and during the pendency of the election have an opportunity to gather facts, debate the merits of union representation with other bargaining unit members and ask questions of both the union and the employer. Furthermore, in a Board-conducted election the integrity of the selection process is preserved by the Board's policing of both the conduct of the parties and the campaign, thus greatly limiting the opportunity for threats and intimidation. The polling place is kept free from electioneering. Neutral Board agents ensure that the



election is free of taint or corruption. Ballot boxes are inspected and electioneering near the polls is prohibited. Observers selected by the employer and union verify the eligibility of voters. The secret ballot is the hallmark of employee free choice, insulating the voter from threats, coercion and peer pressure. The ballot boxes are inspected and sealed by Board agents. The Board agents tally the ballots in the presence of representatives of the employer and union. In the end, no one but the individual employee knows how he voted.

**WHEREFORE**, the Respondent School District shall be and is hereby **ORDERED** to post a notice that it has committed a Prohibited Labor Practice substantially in the form appended to the Hearing Officer's recommended decision within ten (10) days of this decision.

Date: 5-6-12

  
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Duff Westbrook, Chairman  
Public Employee Labor Relations Board